



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C. L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Interim Director

April 16, 2012

JAY HARPER  
504 S MILTON  
SHELLEY ID 83274

RE: UNAUTHORIZED DIVERSION OF MILL CREEK – PENDING NOTICE OF VIOLATION

Dear Mr. Harper:

I have investigated an unauthorized diversion from Mill Creek within SENW Section 4, T14SR23E. I visited the area on April 10, 2012 and was accompanied by Basin Watermaster Sandra Hale. This diversion is located on lands owned by you. I was told the property is being leased and irrigated by Jerry Zollinger. Your decreed water right from Mill Creek no. 45-589 includes a single point of diversion in NESENW Section 4, known locally as the Harper Diversion.

There has been a second point of diversion from Mill Creek constructed approximately 75 yards downstream from the Harper Diversion, which appears to be delivering water to the west half of the property. Water was being diverted from Mill Creek into the new ditch on the day of my visit. Since your water right identifies only one point of diversion in SENW Section 4, the second diversion is unauthorized and its use must be discontinued. According to the watermaster, the lessee Jerry Zollinger has used the second ditch since 2010, has been asked on at least one prior occasion to close the unauthorized diversion, and has not complied.

The Harper Diversion in SENW Section 4 does not have a control gate or a measuring device as required for use within a state water district. In order for your water right to be delivered during your rotation times, your diversion must be able to be controlled and measured.

Effective immediately, you are required to do the following:

- Close or cause to be closed, the unauthorized diversion from Mill Creek within NESW Section 4, T14S R23E.
- Install a controllable, lockable headgate and approved measuring device on the Harper diversion.

Your failure to comply with the above requirements may be cause for the Idaho Department of Water Resources (IDWR or Department) to issue a Notice of Violation for unauthorized diversion from Mill Creek, and for failure to provide an adequate measurement and control device. Notices of Violation can carry civil penalties in the amount of \$300 per acre unlawfully irrigated.

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By copy of this letter, IDWR has also instructed the watermaster of Basin Water District 45A to refuse rotation delivery under the Harper water right 45-589 until such time as the above requirements are met.

**Please respond within 10 days of the date of this letter.** If you believe that IDWR's records may be incorrect, please notify me right away. If you would like to establish a second authorized point of diversion from Mill Creek, you must file and obtain an approved water right transfer. Please contact an agent at the Department's Southern Region Office to discuss filing requirements.

You may contact me at 208.736.3033.

Regards,

A handwritten signature in cursive script that reads "Cindy Yenter". The signature is written in black ink and is positioned above the printed name and title.

Cindy Yenter  
Water Distribution Section

cc: Sandra Hale, Basin Watermaster  
Eugene Matthews, Basin Water District Chairman  
Jerry Zollinger